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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

HARRISON-HALSTED COMMUNITY GROUP, INC., et al.,

Petitioners,

vs.

HOUSING AND HOME FINANCE AGENCY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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HOUSING AND HOME FINANCE AGENCY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners, Harrison-Halsted Community Group, Inc. and 280 other individual plaintiffs in the action below, pray that a Writ of Certiorari may issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled cause on November 28, 1962.

OPINIONS BELOW.

The opinion of the Court of Appeals, reported at 310 F. 2d 99 (1962), is reprinted as Appendix A to this Petition. The judgment of the Court of Appeals is reprinted as Appendix B hereto. The opinions of the District Court dismissing respectively the Amended Complaint and the original Complaint are reprinted as Appendices C and D hereto; neither has been officially reported.

JURISDICTION.

The judgment of the Court of Appeals was entered on November 28, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED.

1. May an action be dismissed for want of a substantial federal question when the issues of federal law raised therein have been settled neither by the Supreme Court, nor by the Court of Appeals for the circuit in question, nor (as to most issues) by any other court?

2. Did Congress intend, by the provisions of the Housing Act of 1949 relating to relocation of displaced families, conformity with over-all city plans, and public hearings, to protect those persons who would be displaced by urban renewal projects?

3. Were the other provisions of the Housing Act and regulations thereunder relied on by petitioners in their Amended Complaint intended for the protection of petitioners and others similarly situated?

4. Where petitioners allege that their private legal rights are being invaded by urban renewal projects carried on in violation of the Housing Act and regulations thereunder, have they standing to seek relief in a federal court?

5. Are local public agencies which carry on federally-aided urban renewal projects under an enforceable legal obligation to comply with the requirements of the Housing Act and regulations thereunder?

6. Has the Housing and Home Finance Administrator authority to approve projects not complying with the Housing Act and his own regulations?

7. Have petitioners suffered legal wrong as the result of the actions of the Administrator, and are they adversely affected or aggrieved by said actions, so as to give them standing to secure a judicial review thereof under the Administrative Procedure Act?

8. Does the public hearing requirement of the Housing Act call for a full and fair administrative hearing, and does it require such hearing to be held before the local public agency carrying on the project in question?

9. May an administrative agency constitutionally determine that a particular area is a "slum and blighted area" within the meaning of the applicable statute without affording notice or hearing to the residents and property owners of such area?

10. Is a judicial hearing on the question of slum and blight in an area at the time condemnation proceedings are brought an adequate substitute for a judicially reviewable agency hearing at the time the area is designated?

11. Are the federal courts barred from considering cases involving the exercise by a local agency of a state's power of eminent domain?

12. Does the pendency of condemnation suits involving a small part of an urban renewal area deprive the federal court of jurisdiction of federal questions involving the entire area, as well as areas not involved in said condemnation suits, when said condemnation suits cannot in any case result in the adjudication of all of the claims presented to the federal court?

13. Is the Housing and Home Finance Agency suable?

14. Are the actions of respondents, which petitioners assert to be unlawful, reviewable in any court, at the suit of any person?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

United States Constitution, Amendment V:

> "No person . . . shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Amendment XIV, Section 1:

> ". . . [N]or shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Administrative Procedure Act, 5 U.S.C. §§ 1000-1009, 60 Stat. 237, as amended. (Relevant excerpts reprinted as Appendix E hereto.)

Housing Act of 1949, Title I, 42 U.S.C. §§ 1441-1462; 63 Stat. 413, as amended. (Relevant excerpts reprinted as Appendix F hereto.)

Illinois Blighted Areas Redevelopment Act, 67½ Ill. Rev. Stat. 1961 §§ 63-91, Laws 1947, p. 1072, as amended. (Relevant excerpts reprinted as Appendix G hereto. Most of the provisions of this Act have been carried over into the Urban Renewal Consolidation Act, *infra*, which is now applicable to the City of Chicago).

Illinois Urban Renewal Consolidation Act, 67½ Ill. Rev. Stat. §§ 91.101-91.136, Laws 1961, p. 3308. (Relevant excerpts reprinted as Appendix H hereto).

STATEMENT OF THE CASE.

Proceedings Below.

This action arose in the United States District Court for the Northern District of Illinois, where plaintiffs (petitioners here) sought a declaratory judgment and injunction to prevent defendant government agencies (respondents here) from proceeding to carry out certain urban renewal projects being federally financed under the Housing Act of 1949. Federal jurisdiction was asserted under 28 U.S.C. § 1331 and under Section 10 of the Administrative Procedure Act, 5 U.S.C. § 1009.

Petitioners filed their original Complaint in the District Court on April 20, 1962, approximately one month after they learned of the final administrative approval of the challenged projects by the Housing and Home Finance Administrator (A. 2037).[1] The District Court on respondents' motions dismissed successively the original and the Amended Complaint for lack of jurisdiction (A. 1020). The Court of Appeals affirmed.

Facts Alleged in the Amended Complaint.

Since the trial court heard no evidence and dismissed the Amended Complaint on motion, the facts well pleaded therein must be taken as true for present purposes.

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[1] All references of the form "(A. .....)" are to the Appendix record filed by petitioners in the Court of Appeals. By stipulation and leave of that court, only four copies of the Appendix were filed, consisting of copies of the more important pleadings, motions, and orders in the court below, bound in three volumes with yellow Acco covers. Respondents attached to their Court of Appeals brief a 2-page Supplemental Appendix (referred to as "Supp. A."), listing certain exhibits to one of the motions to dismiss. References to pages of the appendices to this Petition will be in the form "(Appx. .....)".

The Amended Complaint is 94 pages in length, with 242 pages of affidavits and other exhibits attached.[1] Its scope may be judged from its table of contents (A. 2002-05). It sets forth in detail the history and background of the controversy, describes the parties, and in nine separate counts relates the precise respects in which respondents have violated the Housing Act and regulations thereunder and have invaded the legal and constitutional rights of petitioners. Each of these counts is brought by those petitioners particularly affected by the violations alleged therein, suing both individually and on behalf of others similarly situated.

The challenged urban renewal projects involve three adjacent tracts on the Near West Side of Chicago, designated respectively the Harrison-Halsted, Roosevelt-Blue Island, and Congress-Racine Tracts (see map reprinted as Appendix K hereto, Appx. 90a). The first of these project areas was designated in 1956, the other two in 1961. The adjoining area (including at that time almost all of Congress-Racine) was designated in 1956 as the Near West Side Conservation Area.

Petitioners are Harrison-Halsted Community Group, Inc., a not-for-profit corporation set up to protect the interests of the neighborhood, and 280 individuals (A. 2135-47), of whom 104 own property (A. 2105-09), 76 own small businesses (A. 2111-18), and 144 reside (A. 2119-24) in the three challenged project areas (these categories overlap, of course). Some 46 of the 280 individual petitioners fall into none of these categories, but

---

[1] Petitioners were well aware of the requirements of Fed. R. Civ. P. Rule 8; however, the District Court in dismissing their 39-page original Complaint held their allegations insufficiently specific (A. 1014-15), and advised them to attach detailed affidavits to their Amended Complaint.

are in the case either because they own property or reside in the Near West Side Conservation Area (A. 2110, 2125), or because (like many of the other 234) they relied on promises and representations of respondents which later proved false (A. 2127-32).

Respondents are all of the governmental agencies—federal, state, and local—which are involved in carrying on the challenged urban renewal projects.

This controversy arises out of the broken promises of the City of Chicago and its Land Clearance Commission, and out of their disregard for the requirements of the Housing Act. These respondents induced the members of the Near West Side community to cooperate with and support the clearance of the Harrison-Halsted Tract by promising that it would be redeveloped for housing within the economic means of area residents (A. 2025-29, 2044-49). When this tract was largely cleared, the City secretly arranged a change of plan, whereby this and two adjacent tracts were to be turned over to the University of Illinois for its new Chicago campus (A. 2030-31).

To help the University obtain the federal subsidy it required (see Appx. 4a), respondent Land Clearance Commission designated the two adjacent tracts the University desired as "slum and blighted", and resolved to clear them and convey all three to the University (A. 2031-33). The Commission did this, petitioners allege, without according the people of the area any hearing, on the basis of a purely sham investigation, and in disregard of the fact that these tracts are not slums.

The background and history of this controversy are adequately outlined by the Court of Appeals in the first seven pages of its opinion (Appx. 1a-7a). What the opinion does not set forth, however, are the specific viola-

tions by respondents of the Housing Act and regulations thereunder which petitioners have alleged. Without waiving the others, the most important of these violations are as follows:

1. **Relocation Program.** Section 105(c) of the Housing Act [42 U.S.C. § 1455(c)], as amplified and implemented by the HHFA in its regulations (Urban Renewal Manual,[1] Part 16), requires the city to have a working program for relocating families displaced by urban renewal projects into decent, safe, and sanitary dwellings, at rents or prices within their means, reasonably accessible to their jobs, in the same or equally desirable areas.

Count III of the Amended Complaint (A. 2059-64) categorically alleges that Chicago has no such relocation program, and that its actual relocation practices habitually disregard the above-cited requirements, and result (*inter alia*) in a large portion of families being relocated a second, third, and fourth time.

2. **Minority Group Housing and Consultation.** Part 10, Chapter 1 of the Urban Renewal Manual provides:

> "A project which will result in a substantial net reduction in the supply of housing in the project area available to racial minority families may be undertaken only if the following conditions are met:
> (1) Standard housing replacing the loss is provided elsewhere in the community in new or existing

[1] The Urban Renewal Manual is a three-volume looseleaf publication distributed by the HHFA to all local public agencies (including respondent) carrying on federally aided urban renewal programs. The introduction to the Manual commences: "This Manual prescribes the federal requirements applicable to a local public agency (LPA) or other public body, for: (1) an urban renewal project under Title I of the Housing Act of 1949, as amended to date . . ."

dwelling units not previously available to the minority group.

(2) The LPA [local public agency] has afforded representative leadership of the minority group adequate opportunity for consultation during the planning stage. Representative leadership of the minority group means persons accepted as such by the minority community itself, such as persons holding office in civic or other responsible organizations of minority citizens."

Count IV of the Amended Complaint (A. 2064-67) asserts that the challenged projects will destroy housing occupied by minority families, namely Mexicans and Negroes, including a number of petitioners (A. 2133-34); that such housing is not in fact being replaced; and that no opportunity whatever for consultation was afforded to minority group leaders while these projects were in the planning stage.

3. **General City Plan.** Sections 105(a)(iii) and 110(b) of the Housing Act [42 U.S.C. §§ 1455(a)(iii), 1460(b)] require that the plan for an urban renewal area conform to a general plan for the development of the city as a whole.

Count II of the Amended Complaint (A. 2052-58) asserts (1) that Chicago does not now have, and has never had, a general plan complying with these provisions, and (2) that up to and including the time when the challenged projects were approved, such partial and incomplete plans as the city had invariably called for residential, not institutional, use of the area in question.

4. **Public Hearing and Good-Faith Fact-Finding.** Section 105(d) of the Housing Act [42 U.S.C. § 1455(d)] provides that no land for any federally-assisted urban

renewal project "shall be acquired by the local public agency except after public hearing following notice of the date, time, place, and purpose of such hearing." Sections 110(a) and 110(c)(1) [42 U.S.C. §§ 1460(a), 1460 (c)(1)] confine an urban renewal project to "a slum area or a blighted, deteriorated, or deteriorating area."

Petitioners assert that these provisions (1) require a hearing before the local public agency undertaking the project, here the Chicago Land Clearance Commission; (2) require a full and fair quasi-judicial hearing, at which the agency must make a record supporting its findings of fact and at which affected parties can cross-examine and introduce evidence; and (3) implicitly require an overall good-faith fact-finding procedure by the agency as to the condition of the proposed project area.

Count VII of the Amended Complaint (A. 2080-87) asserts that, as to the Roosevelt-Blue Island and Congress-Racine Tracts, (1) the Land Clearance Commission held no hearing of any kind; (2) no agency held the kind of full and fair hearing referred to above; (3) the Commission engaged in no such good-faith fact-finding procedure, and instead conducted an "investigation" which was a pure sham; and (4) these two tracts are, in fact, not "slum and blighted areas" as defined in the applicable Illinois statute.

Related State Court Proceedings.

Interwoven with the proceedings in this action have been parallel proceedings in the Illinois courts.

Three, two, and one days prior to the filing of the original Complaint in this action—on April 17, 18, and 19, 1962—the Chicago Land Clearance Commission filed the first three of a series of condemnation actions in the Circuit Court of Cook County, covering most of the re-

maining uncleared parcels in the Harrison-Halsted Tract, plus a small portion of the Roosevelt-Blue Island Tract. (No actions have yet been filed covering any part of the Congress-Racine Tract.)

These first three petitions to condemn named as defendants about a dozen of the 280 individual petitioners here. Counsel for petitioners here, on behalf of various of these defendants, filed traverses (the appropriate Illinois pleading) challenging the legality of the takings. These traverses raised, in addition to various issues of Illinois law, all the issues of federal constitutional and statutory law raised by the Amended Complaint here; in fact, copies of the Amended Complaint were attached and incorporated by reference.

The trial court permitted the defendants to produce extrinsic evidence to support their claim that one of the three tracts, Roosevelt-Blue Island, was not in fact a slum and blighted area when the Land Clearance Commission so designated it; however, it denied them discovery as to the Commission's records and employees. It rejected all the other grounds of traverse as a matter of law without hearing evidence, found adversely to the defendants as to the condition of Roosevelt-Blue Island, and entered an order finally overruling all of the traverses.

Appeals were taken from subsequent final judgments by four of the defendants, and were heard by the Illinois Supreme Court on February 1, 1963. These appeals involved questions of purely Illinois law; they also involved (albeit in a different context) substantially all of the issues in this appeal, other than those arising solely out of the federal jurisdictional statutes. The decision of the Illinois Supreme Court is expected at any time.

REASONS FOR GRANTING THE WRIT.

Petitioners will show that the decision of the Court of Appeals herein (a) decides several important questions of federal statutory and constitutional law which have not been, but should be, settled by this Court; (b) decides these questions in a way inconsistent with the rationale of prior decisions of this Court; and (c) decides at least one of these questions in a way directly in conflict with the decision of another Court of Appeals. Petitioners will show also that this is a suitable record on which to review these issues.

I. THIS CASE PRESENTS IMPORTANT ISSUES CONCERNING THE RIGHTS OF INDIVIDUALS AFFECTED BY URBAN RENEWAL, WHICH OUGHT TO BE DECIDED BY THIS COURT.

Urban renewal is a program to rescue our cities from decay. But urban renewal is also a program under which hundreds of thousands of people—usually poor people, often members of minority groups—are forcibly dispossessed of their homes and places of business, so that the land can be cleared and sold to redevelopers, usually private.

This drastic takeover of large areas in our cities from their private owners is justified only because the buildings in these areas have so far deteriorated as to become a public menace. Every court which has upheld the constitutionality of urban renewal has stressed this. Yet even when thus justified, urban renewal unquestionably causes great hardship. Long established communities are destroyed; home owners find that their "just compensation" will not buy a new home; neighborhood businesses are frequently wiped out.

So sweeping a governmental power is subject to grave abuses; it is vital that those affected have an avenue of recourse. If they must endure these hardships, these people have the right to insist that the limitations and safeguards enacted by Congress and by the several state legislatures be strictly observed, so that the urban renewal power be used only for its rightful objects. Because these people are poor, usually socially isolated, and frequently members of minority groups, there is little chance that they can secure redress through economic or political channels. There are obvious limits to the practicality of relying exclusively on the federal Administrator to veto projects which may have powerful local interests behind them. If the courts will not check abuses, therefore, those abuses are likely to go unchecked.

The joint federal-state urban renewal program under Title I of the Housing Act is a giant program, which moreover is just getting under way. Federal expenditures of $4,000,000,000 are authorized [42 U.S.C. § 1453(b)], of which only $667,000,000 had actually been disbursed as of October 31, 1962.[1] As of that date, commitments for projects in the execution stage totalled $1,613,000,000; for projects in the planning stage, $1,260,000,000. Funds had been committed for a total of 1,273 projects in 636 localities scattered throughout the country. All but a handful of states have enacted urban renewal legislation to take advantage of the federal program (see Appendix J, Appx. 73a-88a), and most have projects actively under way. No figures are available as to the number of persons who have been uprooted from their homes and places of business by federally-aided projects, but the number

[1] Statistics from HHFA pamphlet "Urban Renewal Operations, October 1962", extracts from which are reprinted as Appendix I hereto.

must run into the hundreds of thousands, if not millions. From the above statistics, it appears certain many more will be affected in the future than have been in the past.

This Court has so far decided only one urban renewal case, *Berman* v. *Parker*, 348 U.S. 26 (1953). That case settled the legitimacy of urban renewal as an exercise of the police power, and the legitimacy of area rather than building-by-building treatment; it did not reach the issues of standing under the Housing Act and procedural due process which are presented by this case.

As will be seen hereafter, the decisions of the lower courts, both federal and state, are in conflict as to the principal issues raised here. For all of these reasons, the intervention of this Court is urgently required.

II. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONERS HAVE NO STANDING TO COMPLAIN OF VIOLATIONS OF THE HOUSING ACT.

Title I of the Housing Act is basically a subsidy statute. Under the plan adopted by Congress, the federal government itself carries on no urban renewal projects; Congress chose instead to rely upon local initiative for both the planning and the execution of the program.

Local public agencies investigate and designate blighted areas, select those in which projects will be undertaken, and draw up redevelopment plans. Local governing bodies approve these designations and plans, and certify that the projects cannot be undertaken without federal aid. Each project is then submitted to the Housing and Home Finance Administrator. If the city in question has in effect a "workable program for community improvement" satisfying the requirements of the Housing Act, and if the specific project meets the standards of the Act, the Administrator enters into a contract by which the federal

government agrees to advance the funds needed to acquire and clear the project area, and ultimately to grant outright two-thirds or more of the "net project cost", representing the difference between the total project cost and the price received on resale to the redeveloper. Execution of the project is in the hands of the local agency, but is constantly supervised by the HHFA.

In these respects, the urban renewal program resembles many other federal grant-in-aid programs. However, this program is unique in the extent to which it operates *against* some individuals, even while it benefits others and the public at large. In most federal-aid programs, the benefit element is uppermost, and the detriment falls only on the taxpayers at large. In some programs, it is true—highways, for instance—land condemnation plays an important part; but in these programs it is the use *to which* the land is to be put which is the critical element in the program. Only in urban renewal is the *existing condition* of the land the central consideration. Only urban renewal involves taking land because of a judgment that its present owners are abusing it.

Congress recognized the uniqueness of urban renewal when it set forth in the Housing Act a series of requirements to govern the Title I program as a whole and each individual project thereunder. As might be expected, many of these requirements are fiscal in nature (*e.g.*, interest rates); others embody broad public policies which Congress desired to promote, such as opportunities for private enterprise in redevelopment.

In other provisions of the Act, however, Congress exhibited a concern for, and a desire to protect, those persons who would be adversely affected by the carrying out of urban renewal projects. It is precisely upon these pro-

visions of the Act—and upon similarly motivated provisions of the HHFA's regulations pursuant to the Act—that petitioners based their Amended Complaint.

Thus, the relocation provisions of the Act were patently intended for the protection of persons who would be displaced by clearance projects such as those involved here, rather than merely the public at large, *Gart* v. *Cole*, 263 F.2d 244, 250-1 (C.A. 2, 1959), cert. den. 359 U.S. 958 (1959), so holds; so did the trial court here (Appx. 19a). Similarly, the provisions of the Urban Renewal Manual on minority-group housing and consultation are plainly intended to protect groups who find it especially difficult to secure adequate housing. As to the public-hearing requirement, which was added to the Housing Act by amendment from the floor to both Houses of Congress [95 Cong. Rec. 4864, 8549-50 (1949)], the debate makes clear that the purpose of this provision was to give a measure of protection to "those whose land is going to be taken under this Act and who do not now under any construction under law have a right to come in and be heard." [95 Cong. Rec. 8544 (1949), Rep. Smathers].

That the general plan requirement of the Act was intended, in significant part, for the protection of those living and working in prospective urban renewal areas, is perhaps not so obvious; yet petitioners believe that, upon full argument, they can so demonstrate. Obviously the requirement was intended as a check on hasty, arbitrary, unplanned decisions by local agencies. If this requirement had been enforced here, the losses now being suffered by those who changed their positions in reliance on the original Harrison-Halsted Redevelopment Plan could not have occurred. The Court's attention is called particularly to the economic and social waste involved in the impending destruction of the newly erected parish school

to which many of the parishioners contributed, described by the Court of Appeals in its opinion (Appx. 4a, 7a).

Here, the Court of Appeals, without analyzing either the language or the legislative purpose of the Housing Act provisions cited by petitioners, held that they had no standing to complain of violations of these provisions. If the Court of Appeals was right, then no private person can ever have standing to seek redress in a federal court for violations of the Housing Act's requirements, no matter how plainly Congress intended these requirements for his protection. Neither the congressional intent nor the past decisions of this Court justify such a result.

A. The denial of standing here goes far beyond the Frothingham, Alabama Power, and Tennessee Electric cases.

The Court of Appeals purports to base its denial of standing to petitioners here on *Frothingham* v. *Mellon*, 262 U.S. 447, 488 (1923), where this Court held that a party has standing to challenge a statute only if "he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

But it is an enormous leap from *Frothingham* to this case. Mrs. Frothingham was challenging a federal appropriation which affected her only as it affected every other federal taxpayer. Here petitioners will lose their properties, homes, and places of business if the challenged projects are allowed to proceed; they are indeed "sustaining some direct injury", not shared by people generally.

This leap, moreover, is not supported by the later decisions of this Court. Thus, in *Alabama Power Co.* v. *Ickes*, 302 U.S. 464 (1938), this Court denied standing to a

private power company to challenge federal subsidies given to competing municipal power companies. Since the plaintiff had no exclusive franchise and therefore no legal right to be free of lawfully conducted competition, it had no standing to question the source of its rivals' funds.[1]

In the similar case of *Tennessee Electric Power Co.* v. *TVA*, 306 U.S. 118, 137 (1939), this Court held that the test of standing is whether "the right invaded is a legal right—one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege."

Here, the Court of Appeals considered only the fourth of these categories, and concluded in effect that the Housing Act is not "a statute which confers a privilege". What it failed to note is that petitioners have pre-existing legal rights falling within the first three categories—rights of owners in their property, rights of tenants in their contractual relationships with their landlords, rights of businessmen in their advantageous relationships with their customers, rights arising out of reliance and estoppel—which will be invaded by the challenged projects.

True, property and related rights are held subject to the lawful exercise of the power of eminent domain by authorized public agencies. But here respondent local agencies are proceeding in flagrant violation of applicable provisions of the Housing Act and regulations thereunder

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[1] This decision explains **Kansas City Power & Light Co. v. MacKay**, 225 F. 2d 924 (C.A. D.C. 1955), cert. den. 350 U.S. 884 (1955), **Taft Hotel Corp. v. HHFA**, 262 F. 2d 307 (C.A. 2 1958), and **Pittsburgh Hotels Association v. Urban Redevelopment Authority**, 202 F. Supp. 486 (D.C. Pa. 1962), all cited by the Court of Appeals here, in all of which competitors were denied standing.

designed for the protection of petitioners and others like them. Under such circumstances, it would be stultifying to characterize respondents' acts as "lawful", or to hold that petitioners' rights must yield despite the illegality.

B. The denial of standing here goes beyond Perkins v. Lukens Steel Co., and conflicts with Gart v. Cole.

In *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113 (1940), this Court denied an employer standing to challenge the Secretary of Labor's wage order, holding that no one has a vested legal right to a future government contract, and that the statutory provision in question was not intended to protect employers. Impliedly, the result would have been different had the plaintiff been able to show the statute was intended for his protection.

The importance of congressional intent is pointed up by many other cases. Thus, congressional intent to benefit or protect a particular class may even create new private causes of action for members of the class, as in *Texas & Pacific Ry. Co.* v. *Rigsby*, 241 U.S. 33, 39-40 (1916).

The Court of Appeals acknowledged the importance of who Congress intended to protect in its own recent decision in *Daly* v. *Columbia Broadcasting System*, 309 F. 2d 83 (C.A. 7, Adv. 1962), where it carefully analyzed the intent of the Communications Act provision relied on by the plaintiff before denying him standing. When it here failed to discuss the intent of the Housing Act provisions cited by petitioners, and denied them standing despite the clear protective intent of those provisions, the Court of Appeals went far beyond the decisions of this Court.

Its decision here also squarely conflicts with that of the Second Circuit in *Gart* v. *Cole*, 263 F. 2d 244, 250-1 (C.A. 2, 1959), cert. den. 359 U.S. 978 (1959), involving as here

an urban renewal project under the Housing Act. Chief Judge Clark there denied plaintiffs' standing to assert that project land must be disposed of by competitive bidding, since any such requirement would be for the benefit, not of landowners or tenants in the area, but of the federal treasury and the general public. He went on to hold, however, that "plaintiffs do have standing in this action to challenge the Administrator's refusal to grant them an oral hearing on the feasibility of the City's relocation plan." (263 F. 2d at 250) Dealing with plaintiffs' further claim that the Administrator had improperly delegated his duty to review the City's relocation plan, the court said (263 F. 2d at 251):

> "As 42 U.S.C. § 1451(c)(4) is in protection of the interests of displaced residents such as appellants, *they have standing to raise this claim.*" (Emphasis added)

Although petitioners' claims here differ from those in *Gart* v. *Cole* both as to the facts alleged and as to the statutory provisions relied on, the conflict of the two decisions on the standing question is inescapable.

Of the few other urban renewal cases in the federal courts, it cannot be said that the balance favors the Seventh Circuit's view rather than the Second's. As pointed out earlier, plaintiffs denied standing were competitors in *Taft Hotel Corp.* v. *HHFA*, 262 F. 2d 307 (C.A. 2, 1958) and *Pittsburgh Hotels Association* v. *Urban Redevelopment Authority*, 202 F. Supp. 486 (D.C. Pa. 1962). In *Allied-City Wide, Inc.* v. *Cole*, 230 F. 2d 827 (C.A. D.C. 1956), plaintiffs were residents; as here, the court did not specify what provisions of the Act were allegedly violated, except to say that they were "beneficial to the United States." The opinion, a two-paragraph exer-

cise in *ipse dixit*, contributes nothing to the clarification of the issue. On the other hand, standing seems to have been assumed in *Barnes* v. *City of Gadsden*, 268 F. 2d 593 (C.A. 5, 1959), cert. den. 361 U.S. 915, where Negro plaintiffs charged that urban renewal projects were being used to foster segregation. In the very recent *Blackman* v. *Erieview Corp.*, 311 F. 2d 85 (C.A. 6, Adv. 1962), the standing of a local (not federal) taxpayer was upheld.

In view of this evident conflict and confusion, the clarifying intervention of this Court is urgently required.

C. The courts below misinterpreted the Administrative Procedure Act.

Section 10(a) of the Administrative Procedure Act [5 U.S.C. § 1009(a)] affords judicial review to "any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute". It is established that the phrase "suffering legal wrong" codifies the test of *Tennessee Electric Power Co.* v. *TVA*, 306 U.S. 118, 137 (1939), which test, as pointed out earlier, petitioners here meet. It consequently is of lesser importance that the Court of Appeals also misinterprets the phrase "adversely affected or aggrieved", as the legislative history shows. Sen. Doc. No. 248, 79th Cong., 2d Sess. 212, 276 (1946); 3 Davis, *Administrative Law Treatise* § 22.02 (1958).

In denying petitioners standing here, the Court of Appeals notes that the Housing Act does not provide for judicial review of the actions of the Administrator, and compares it in this to the Communications Act, as recently interpreted in *Daly* v. *Columbia Broadcasting System*, 309 F. 2d 83 (C.A. 7, Adv. 1962). However, the Communications Act was enacted before the APA and

the Housing Act afterward. The significance of this distinction was pointed out by this Court in *Brownell* v. *We Shung*, 352 U.S. 180, 185 (1956); *Shaughnessy* v. *Pedreiro*, 349 U.S. 48 (1955); and see *Airline Dispatchers Association* v. *National Mediation Board*, 189 F. 2d 685, 688-9 (C.A.D.C. 1951), cert. den. 342 U.S. 849. In any post-APA statute, "legislative intent to forbid judicial review must be, if not [in] specific . . . terms, at least clear and unmistakable. . . . *The mere fact that Congress had not expressly provided for judicial review would be completely immaterial.*" Sen. Doc. No. 248, 79th Cong., 2d Sess., 368 (1946) (emphasis added). No such clear and unmistakable intent is to be found in the Housing Act.

There exists considerable confusion among the federal courts as to the proper interpretation and application of the APA. Here again, this Court's intervention is needed.

III. THE COURT OF APPEALS ERRED IN REFUSING TO PASS ON PETITIONERS' CLAIM THAT ILLINOIS' REFUSAL TO GRANT THEM AN ADMINISTRATIVE HEARING VIOLATED THE DUE PROCESS CLAUSE.

As the basis for federal-question jurisdiction under 28 U.S.C. § 1331, petitioners in their Amended Complaint (A. 2008, 2081-82, 2084-85) asserted violations not only of the Housing Act but also of their rights to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution. The opinion below notes these constitutional claims (Appx. 7a), but does not discuss them further. Near the close of its opinion (Appx. 13a), the Court of Appeals says it will not "speculate that the state courts of Illinois will not protect any rights the plaintiffs may have", and accordingly remits petitioners to the state courts for consideration of their federal due process claims.

If the substance of petitioners' claim were merely that their federal constitutional rights *might* in some unspecified way be violated during the course of the state condemnation proceedings, then the position of the Court of Appeals would be unassailable. This is all that *Georgia* v. *Chattanooga*, 264 U.S. 472 (1924) holds.[1] But that is not the situation here.

A. It is settled law in Illinois to deny a judicially reviewable administrative hearing on the determination whether an area is slum and blighted.

It is petitioners' contention that procedural due process requires a judicially reviewable administrative hearing before an urban renewal agency determines that an area is slum and blighted. Petitioners further contend that the public hearing requirement of the Housing Act [42 U.S.C. § 1455(d)] should be construed in the light of this constitutional requirement, *Bratton* v. *Chandler*, 260 U.S. 110 (1922). The reasons for these contentions will be summarized hereafter.

Illinois, however, takes a different view. Under the Illinois statutes (67-½ Ill. Rev. Stat. 1961 §§ 73, 74, 91.109, 91.110), urban renewal agencies are authorized to make investigations and hold hearings prior to designating slum and blighted areas, but are not required to do so. In *Zurn* v. *City of Chicago*, 389 Ill. 114 (1945), the Illinois Supreme Court held that neither notice nor hearing was constitutionally required. In *Ross* v. *Chicago Land Clearance Commission*, 413 Ill. 377 (1952),

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[1] The other cases cited by the Court of Appeals on this point, **Amalgamated Clothing Workers v. Richmond Brothers Co.**, 348 U.S. 511 (1955) and **Southern California Petroleum Corp. v. Harper**, 273 F.2d 715 (C.A. 5, 1960), do not deal with condemnations at all; they interpret 28 U.S.C. § 2283, which is irrelevant here because petitioners sought no injunction against any pending state court proceeding.

and *Shapiro* v. *Chicago Land Clearance Commission*, 19 Ill. App.2d 461, 154 N.E.2d 329 (1st Dist. 1958), respectively, it was held that a slum and blighted designation is not judicially reviewable either under the Illinois Administrative Review Act (110 Ill.Rev.Stat. 1961 §§ 264-279), or by common-law certiorari. The language of these cases appears broad enough to eliminate any possibility of litigating the accuracy or legality of a slum and blighted designation prior to condemnation.

In view of these decisions, it was not "speculation" by petitioners to assert that Illinois would deny them—indeed, had denied them—a judicially reviewable administrative hearing. The courts below should have considered petitioners' federal constitutional clams.

B. Procedural due process and fact finding in urban renewal are vital issues requiring this Court's attention.

For the reasons set out in Part I above, procedural regularity is of the utmost importance if grave abuses of the drastic power of urban renewal are to be avoided. Urban renewal agencies, like other agencies of government, are subject to the natural human tendency to expand their powers beyond their proper scope. Without procedural controls, judicially enforced, these agencies will find it all too easy to move into areas which are not truly blighted, but which are desired for other purposes. See *Kaskel* v. *Impelliterri*, 306 N.Y. 73, 115 N.E. 2d 659, 663 (1953) (dissenting opinion). Thus the question of who ultimately decides whether an area is slum and blighted, the definition of that (or a comparable) term, and the procedure by which the decision is arrived at, become the crucial issues in urban renewal.

All but 7 states have urban renewal statutes, and all of these contain some kind of definition of the areas in

which urban renewal is to take place. In this respect, Illinois is typical; 30 of the states have definitions which are substantially similar to its, and 9 more have definitions which are roughly so (see Appendix J hereto). As to the procedure for deciding whether an area is slum and blighted, the statutes diverge more widely; many states require hearings, while others, like Illinois, merely authorize them.

The courts of the various states have been called upon to consider the process by which an area is determined to be slum and blighted in a substantial number of cases. No single line of decision emerges from these cases; it is apparent that the courts have been pulled in opposite directions by conflicting considerations. For the most part, the courts have not sufficiently analyzed the unique features of urban renewal, and have responded to challenges by invoking the doctrine, carried over from the more traditional eminent domain cases, that the courts will not consider the wisdom or expediency of a particular exercise of the power of eminent domain by an authorized executive agency.[1] They have not observed that what is at issue, in the challenge to a slum and blighted designation, is the *existence* of the power in the particular case, not the wisdom of its exercise. Moreover, the courts have been influenced by the complexity of the decision to be made and the need for expert administrative judgment.[2]

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[1] **Cannata v. City of New York**, 11 N.Y.2d 210, 182 N.E. 2d 395 (1962); **Oliver v. City of Clairton**, 374 Pa. 333, 98 A.2d 47 (1953); **Davis v. City of Lubbock**, 160 Tex. 38, 326 S.W.2d 699 (1959); **State ex rel. Dalton v. Land Clearance Authority**, 364 Mo. 974, 270 S.W.2d 44 (1954).

[2] **Gohld Realty Co. v. City of Hartford**, 141 Conn. 135, 104 A.2d 365 (1954); **Opinion to the Governor**, 76 R.I. 249, 69 A.2d 531 (1949).

On the other hand, there is a background of concern—sometimes explicitly stated, sometimes not—for the possibility of abuse, and a recognition of the drastic nature of the power being exercised.[1] In a good many cases the courts have compromised: they have promised to step in to stop serious abuse, yet have not indicated any way an objector could go about demonstrating such abuse.[2] The dilemma this leaves an objector in is pointed up by the present case, where petitioners have categorically alleged that the Chicago Land Clearance Commission's "investigation" of the Roosevelt-Blue Island and Congress-Racine Tracts was a pre-arranged sham, but have never so far been given the opportunity to prove their assertions, either in the federal or in the state courts.

This wholly unsatisfactory state of the law—unsatisfactory from the point of view of protecting the rights of the individual—can only be corrected by this Court.

C. Due process requires a full and fair hearing on the designation of an area as slum and blighted.

The principal defect of the Illinois cases previously cited, and of most of the cases from other states, is their

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[1] **Rubinoff v. District Court,** 145 Colo. 225 (1961) ("Serious harm could result from an arbitrary exercise of the urban renewal power, but wisely used it promises to be the source of great good."); **Housing & Redevelopment Authority v. Minneapolis Metropolitan Co.,** 259 Minn. 7, 104 N.W.2d 864 (1960); **Belovsky v. Redevelopment Authority of Philadelphia,** 357 Pa. 329, 54 A.2d 277 (1947) (dissenting opinion).

[2] **Hunter v. Adams,** 180 Cal. App.2d 511 (1960); **Schenck v. City of Pittsburgh,** 364 Pa. 31, 70 A.2d 612 (1950); **Crommett v. City of Portland,** 150 Me. 217, 107 A.2d 841 (1954); **Despatcher's Cafe v. Somerville Housing Authority,** 332 Mass. 259, 124 N.E.2d 528 (1955); **Bowker v. City of Worcester,** 334 Mass. 422, 136 N.E.2d 213 (1956).

failure to analyze precisely what is involved in the decision of an urban renewal agency, operating under a statute like Illinois', to undertake a blighted area redevelopment project.

The Illinois courts have treated this as if it were a single decision, basically legislative in nature. Now, there are undoubtedly legislative elements in the overall decision, as to which no court would wish to substitute its judgment for that of the authorized agency, except in cases of extreme abuse. These include the preliminary determination of the boundaries of the area;[1] the decision, once the condition of the area has been determined, whether or not to carry on a project there; and the type of redevelopment desired, within the context of the general city plan.

But one important element in the overall decision is not a policy judgment, like those just mentioned, but a judgment concerning matters of fact—whether or not the area in question possesses the physical and social characteristics which the legislature has used to define a slum and blighted area. Some courts, but too few, have recognized this an an essentially factual determination. See, *e.g., Opinion to the Governor*, 76 R.I. 249, 69 A. 2d 531, 536-7 (1949).

More important, the *kind* of facts which go into arriving at this judgment are facts about the particular, limited area under study, not about general city-wide or state-wide conditions. These are "adjudicative facts",

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[1] But see **Gomillion v. Lightfoot**, 364 U.S. 339 (1960); **People ex rel Adamowski v. Village of Streamwood**, 15 Ill. 2d 595, 155 N.E. 2d 635 (1959). Quaere, whether the Congress-Racine Tract (see map, Appx. 90a) may not represent such an abuse.

therefore, rather than "legislative facts", 1 Davis, *Administrative Law Treatise* §§ 7.02-7.04 (1958).

Where an agency must act on the basis of adjudicative facts relating to the affairs and properties of a limited group of persons who will be directly affected by the agency's decision, due process requires a quasi-judicial or "trial" type of hearing, and not simply the legislative or "argument" type of hearing which is appropriate when action is to be based on general legislative facts. This is the teaching of *Morgan* v. *United States*, 298 U.S. 468, 480 (1936), where this Court held that a full and fair quasi-judicial hearing as to the adjudicative facts was required, even though the function in which the Secretary of Agriculture was engaged—rate making—was a legislative function. *St. Joseph's Stockyards Co.* v. *United States*, 298 U.S. 38, 50 (1936).

Within a single field of governmental activity, a quasi-judicial hearing may sometimes be required and sometimes not, depending upon the nature of the facts in dispute upon which governmental action is to be based. Thus, in the field of licensing, contrast *Goldsmith* v. *Board of Tax Appeals*, 270 U.S. 117 (1926) (facts as to an individual's fitness—quasi-judicial hearing required) with *Albert* v. *Public Service Commission*, 120 A. 2d 346 (Md. 1956) (facts concerning whether or not total number of licenses issued should be increased—no hearing required). Similarly, in the field of taxation, compare *Londoner* v. *City and County of Denver*, 210 U.S. 373 (1908) (special assessments based on facts as to individual properties—hearing required) with *Bi-Metallic Investment Co.* v. *State Board of Equalization*, 239 U.S. 441 (1915) (uniform citywide increase in valuations based on general facts—no hearing required).

In the ordinary eminent domain case, the use to which the land is to be put is everything; it is merely fortuitous that one person's property is taken and not another's. In urban renewal, however, the designation of an area as slum and blighted requires the agency to pass a collective judgment on the people of the area—to decide that they have so abused or neglected their property that it has become a public menace. The standards of judgment have been laid down by the legislature, but it is the administrative agency which applies them to the particular area and particular people before it. When made, its judgment forms the basis for agency action which affects the people of the area in the most drastic way possible.

For all these reasons, fundamental fairness requires that, before an urban renewal agency passes judgment on an area and its people by designating it slum and blighted, the agency should accord the people of the area a full and fair administrative hearing, at which the appropriate officials of the agency will produce the evidence upon which the judgment is to be made, and at which the people of the area will have the opportunity to cross-examine and to present countervailing evidence.

D. Judicial hearing at the time of condemnation is not an adequate substitute for judicially reviewable administrative hearing at the time of designation.

The theory of the Illinois cases cited above is that the designation of an area as slum and blighted is not a "taking" and therefore does not affect property rights: consequently, so the Illinois courts hold, no hearing is required until condemnation is begun.

This theory, petitioners submit, ignores the immediate and drastic effects of the "slum and blighted" label on

property in the designated area (A. 2081, 2196). A heavy stigma attaches to all property in the area; markets for property dry up, since no outsider is likely to be interested in investing in brief occupancy and a lawsuit. Since the shadow of condemnation deters even ordinary maintenance, the area goes rapidly downhill; if not a slum before, it soon becomes one. Community organization disintegrates as each family and institution makes its separate plans to depart. The agency begins to acquire buildings, and these rapidly become the plague spots of the neighborhood, pulling down the property of the holdouts. Even when the first condemnation suit is filed, it does not cover the entire area; the owners whose parcels are left until last may have to wait months and even years[1] for the agency to bring suit against them, while their neighborhood gradually becomes a wilderness of rubble. (See *Chicago Housing Authority* v. *Lamar*, 21 Ill. 2d 362, 172 N.E. 2d 799 (1961).)

These same considerations show why the hearing at the time of condemnation is a wholly inadequate substitute for an administrative hearing at the time of designation—so inadequate as to amount to a denial of due process. First, delay alone can irreparably injure the rights of objecting residents. Neither the Illinois statute nor the Illinois courts require that condemnations be begun promptly. The difficulty of proving that an area was not a slum at the time of its designation is certain to increase rapidly as the years pass, while the agency determination helps create the very conditions it purported to describe. Worse, the agency can simply fail to bring condemnation proceedings against the known objectors until it has acquired and wrecked most of the

[1] Here, in the case of the Harrison-Halsted Tract, from September 1956 to April 1962, or 5½ years.

properties in the area, thus effectively destroying the community beyond hope of restoration.

Moreover, the Illinois "wait until condemnation" rule exaggerates the already extreme inequality of parties. A single project may encompass a dozen or more separate condemnation suits, not necessarily simultaneous. To contest the validity of the area's slum and blighted designation, each property owner must file his own traverse and bring forward his own evidence. Even if concurrent traverses are consolidated (as they were in related state court proceedings here, but would not necessarily be in other situations), the burden is far greater than it would be if there were a single administrative hearing followed by judicial review. Also, many affected persons will not be made parties to condemnation actions, and consequently will never be able to challenge the slum and blighted designations in the only way Illinois allows.

Petitioners submit that the Illinois cases cited above, and the apparent concurrence in them by the Court of Appeals, conflict with the rationale of *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123 (1951), and *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926). In the *Joint Anti-Fascist* case, this Court held that an organization was entitled to a hearing before being placed on the Attorney General's list of subversive organizations, even though the only ostensible result of this listing would be felt in future security proceedings against members of the organization. In the *Ambler Realty* case, this Court held that a property owner had standing to challenge the zoning of his property, even though no enforcement had been undertaken and though he had no plans to make a prohibited use of his property, on the grounds that there was an immediate effect on

its market value. These cases, along with *Morgan* v. *United States*, 298 U.S. 468, 480 (1936), support petitioners' contention that the due process right to a hearing and to judicial redress commences as soon as the administrative action actually affects the individual.

Respondents have contended that petitioners' views, if adopted, would "destroy urban renewal." Petitioners submit that the opposite is the case. All the experience of our history teaches us that great public programs are solidified, not destroyed, when they are forced to observe fair procedures in dealing with the rights and interests of individuals, and where their proceedings are so far subjected to judicial scrutiny as to produce popular confidence that their powers are not being abused.

IV. THE REJECTION OF JURISDICTION HERE CONFLICTS WITH ALLEGHENY v. MASHUDA.

The opinion of the Court of Appeals suggests, as a grounds for rejecting federal jurisdiction, that petitioners can assert their claims under the federal Housing Act and the Fourteenth Amendment in the state-court condemnation proceedings. This conflicts with *County of Allegheny* v. *Frank Mashuda Co.*, 360 U.S. 185, 188, 191, reh. den. 361 U.S. 855 (1959), where this Court held that a federal court may not refuse to adjudicate a case otherwise within its jurisdiction simply because the case involved a State's power of eminent domain. *Mashuda* was a diversity rather than a federal-question case, but that does not affect the principal there enunciated.

The decision of the Court of Appeals here is also in conflict with its own recent decision in *Progress Development Corp.* v. *Mitchell*, 286 F. 2d 222, 231-2 (C.A. 7, 1961); and it misapprehends this Court's decision in *Georgia* v.

Chattanooga, 264 U.S. 472 (1924), where this Court disposed of Georgia's contentions *on the merits*.

The fact is that so far the Illinois courts have, at the behest of respondent City of Chicago, refused to consider petitioners' Housing Act claims, on the supposed authority of *City of Chicago* v. *Sanitary District*, 272 Ill. 37 (1916), *Summerfield* v. *City of Chicago*, 197 Ill. 270 (1902), and *C. B. & Q. R.R. Co.* v. *Naperville*, 169 Ill. 25 (1897), and have rejected petitioners' constitutional claims on the authority of *Zara* v. *City of Chicago*, 389 Ill. 114, 59 N.E.2d 18 (1945).

Whether the Illinois Supreme Court will affirm or reverse these holdings is not known at the present time, although it should be very shortly. Until then, respondents are in no position to assert that the Illinois courts will adjudicate petitioners' Housing Act claims or uphold petitioners' due process claims, since they have done everything in their power to prevent it.

V. THE DISMISSAL BELOW CONFLICTS WITH BELL v. HOOD.

The District Court dismissed both the original and the Amended Complaint for want of jurisdiction, not for failure to state a claim on which relief could be granted (Appx. 21a, 34a). Without adverting to the nature of the dismissal, the Court of Appeals affirmed.

In *Bell* v. *Hood*, 327 U.S. 678, 682 (1946), which petitioners cited to the courts below, this Court held that a suit may be dismissed for want of jurisdiction *only* "where the alleged claim under the Constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or where such claim is wholly insubstantial and frivolous." Petitioners

here have put forward a number of extremely serious contentions, including questions of standing, statutory interpretation, and constitutional rights, which have not been settled by any prior decision of this Court—some, indeed, which have not previously been passed on by any court. Dismissal for want of jurisdiction was plain error.

VI. THIS CASE PRESENTS A SUITABLE RECORD ON WHICH THIS COURT COULD REVIEW THE IMPORTANT LEGAL ISSUES RAISED.

Although the Amended Complaint was dismissed on motion, and the court below heard no evidence, this case nevertheless presents an unusually complete record. In dismissing the original Complaint, the District Court put petitioners in the position of having to set forth in much greater detail than is ordinarily required the respects in which they claim the Housing Act and their constitutional rights were being violated. Thus the Court will not be called on to weigh conflicting allegations of fact, yet the factual allegations are sufficiently detailed to illuminate the legal issues presented.

As to the Housing Act issues, no future record is likely to present greater detail, since if the decision below stands, future cases will presumably be likewise dismissed upon motion. This case also presents an unusual range of unresolved issues under the Housing Act. As to the issues of procedural due process, the record here is again unusually clear. The record in the parallel state court proceedings would present more details, but none are essential for the clarification of the fundamental issues.

VII. WHY THE COURT MAY WISH TO DEFER ACTION ON THIS PETITION UNTIL THE ILLINOIS SUPREME COURT DECIDES THE RELATED STATE CASES.

Appeals in the related state cases are now before the Illinois Supreme Court, and a decision is expected at an early date. There are several reasons why this Court might desire to defer action on the present Petition until after the Illinois Supreme Court renders its opinion.

On the one hand, the Illinois court could rule some or all of the disputed projects invalid as a matter of Illinois law, thereby rendering moot some or all of the issues in this action. The Illinois court could also grant other relief which would greatly modify the position of petitioners here. On the other hand, if the Illinois Supreme Court upholds the trial court, this will refute the Court of Appeals' idea (Appx. 13a) that petitioners could obtain a hearing in the Illinois courts on all issues raised in their federal Amended Complaint. No matter how the Illinois court rules, its decision is likely to clarify the law of Illinois on a number of points material here.

The basic issues of this case are the distribution of jurisdiction between federal and state courts, and between court and administrative agency. Should the Illinois Supreme Court decide adversely to petitioners, they intend to file a further petition for certiorari, which will furnish this Court with an even more complete record, permitting examination of every aspect of the problems presented.

CONCLUSION.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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